

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 44

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO EMPLOYMENT SECURITY LAW; AMENDING CHAPTER 13, TITLE 72, IDAHO
2 CODE, BY THE ADDITION OF A NEW SECTION 72-1351B, IDAHO CODE, TO PROHIBIT
3 CERTAIN RELIEF FROM LIABILITY RELATING TO BENEFITS PAID TO A CLAIMANT
4 THAT ARE SUBSEQUENTLY DETERMINED TO BE OVERPAID, TO PROVIDE CONDI-
5 TIONS, TO CLARIFY WHAT CONSTITUTES A TIMELY RESPONSE, TO PROVIDE FOR
6 EXTENDED TIME LIMITS, TO CLARIFY WHAT CONSTITUTES AN ADEQUATE RESPONSE,
7 TO CLARIFY WHAT CONSTITUTES A PATTERN OF FAILURE TO RESPOND TIMELY AND
8 ADEQUATELY, TO PROVIDE FOR NOTIFICATION OF THE DEPARTMENT OF LABOR'S
9 DETERMINATION AND TO PROVIDE FOR APPEAL; AMENDING SECTION 72-1369,
10 IDAHO CODE, TO PROVIDE FOR THE COLLECTION OF CIVIL PENALTIES, TO PROVIDE
11 FOR THE DEPOSIT OF CIVIL PENALTIES INTO SPECIFIED FUNDS AND TO LIMIT THE
12 COMPROMISE OF CIVIL PENALTIES; AMENDING SECTION 72-1603, IDAHO CODE,
13 TO REVISE A DEFINITION AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING
14 EFFECTIVE DATES.
15

16 Be It Enacted by the Legislature of the State of Idaho:

17 SECTION 1. That Chapter 13, Title 72, Idaho Code, be, and the same is
18 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
19 ignated as Section 72-1351B, Idaho Code, and to read as follows:

20 72-1351B. FEDERAL CONFORMITY PROVISION PROHIBITING RELIEF FROM LIA-
21 BILITY. (1) Notwithstanding any other provision of this chapter, an experi-
22 ence rated employer's account may not be relieved of charges and a reimburs-
23 ing employer may not be relieved of liability for benefits paid to a claimant
24 that are subsequently determined to be overpaid if:

25 (a) The covered employer or an agent of the covered employer is at fault
26 for failing to respond timely or adequately to the department's written
27 or electronic request for information relating to a claim for unemploy-
28 ment insurance benefits; and

29 (b) The covered employer or agent of the covered employer has estab-
30 lished a pattern of failing to timely or adequately respond.

31 (2) A response is timely if the requested information is received by
32 the department within seven (7) days from the date the request is mailed or
33 sent electronically. This time limit may be extended by the department at
34 its discretion upon a covered employer's or agent of the covered employer's
35 written request.

36 (3) A response is adequate if it provides sufficient facts to allow the
37 department to make the correct determination. A response will not be consid-
38 ered inadequate if the department failed to ask for all necessary informa-
39 tion.

40 (4) A pattern of failure to respond timely or adequately means at least
41 two (2) or more instances of such behavior. If a covered employer uses a
42 third party agent to respond on its behalf, then a pattern may be established

1 based upon that agent's behavior with respect to the individual client or
2 covered employer that agent represents.

3 (5) A covered employer shall be notified in writing of the department's
4 determination, which shall become final unless, within fourteen (14) days
5 after notice as provided in section 72-1368(5), Idaho Code, an appeal is
6 filed by an interested party with the department in accordance with the pro-
7 visions of section 72-1361, Idaho Code.

8 SECTION 2. That Section 72-1369, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 72-1369. OVERPAYMENTS, CIVIL PENALTIES AND INTEREST -- COLLECTION AND
11 WAIVER. (1) Any person who received benefits to which he was not entitled un-
12 der the provisions of this chapter or under an unemployment insurance law of
13 any state or of the federal government shall be liable to repay the benefits
14 and the benefits shall, for the purpose of this chapter, be considered to be
15 overpayments.

16 (2) Civil penalties. The director shall assess the following monetary
17 penalties for each determination in which the claimant is found to have made
18 a false statement, misrepresentation, or failed to report a material fact to
19 the department:

20 (a) Twenty-five percent (25%) of any resulting overpayment for the
21 first determination;

22 (b) Fifty percent (50%) of any resulting overpayment for the second de-
23 termination; and

24 (c) One hundred percent (100%) of any resulting overpayment for the
25 third and any subsequent determination.

26 (3) Any overpayment, civil penalty and/or interest which has not been
27 repaid may, in addition to or alternatively to any other method of collection
28 prescribed in this chapter, including the creation of a lien as provided by
29 section 72-1360, Idaho Code, be collected with interest thereon at the rate
30 prescribed in section 72-1360(2), Idaho Code. The director may also file a
31 civil action in the name of the state of Idaho. In bringing such civil ac-
32 tions for the collection of overpayments, penalties and interest, the di-
33 rector shall have all the rights and remedies provided by the laws of this
34 state, and any person adjudged liable in such civil action for any overpay-
35 ments shall pay the costs of such action. A civil action filed pursuant to
36 this subsection (3) shall be commenced within five (5) years from the date of
37 the final determination establishing liability to repay. Any judgment ob-
38 tained pursuant to this section shall, upon compliance with the requirements
39 of chapter 19, title 45, Idaho Code, become a lien of the same type, duration
40 and priority as if it were created pursuant to section 72-1360, Idaho Code.

41 (4) Collection of overpayments and civil penalties.

42 (a) Overpayments, other than those resulting from a false state-
43 ment, misrepresentation, or failure to report a material fact by the
44 claimant, which have not been repaid or collected, may, at the discre-
45 tion of the director, be deducted from any future benefits payable to
46 the claimant under the provisions of this chapter. Such overpayments
47 not recovered within five (5) years from the date of the final determi-
48 nation establishing liability to repay may be deemed uncollectible.

1 (b) Overpayments resulting from a false statement, misrepresentation,
 2 or failure to report a material fact by the claimant which have not been
 3 recovered within eight (8) years from the date of the final determina-
 4 tion establishing liability to repay may be deemed uncollectible.

5 (c) The first fifteen percent (15%) of a civil penalty assessed pur-
 6 suant to subsection (2) of this section shall be paid into the employ-
 7 ment security fund created in section 72-1346, Idaho Code, and any addi-
 8 tional amounts collected shall be paid into the employment security ad-
 9 ministrative and reimbursement fund created in section 72-1348, Idaho
 10 Code.

11 (5) The director may waive the requirement to repay an overpayment,
 12 other than one resulting from a false statement, misrepresentation, or fail-
 13 ure to report a material fact by the claimant, and interest thereon, if:

14 (a) The benefit payments were made solely as a result of department er-
 15 ror or inadvertence and made to a claimant who could not reasonably have
 16 been expected to recognize the error; or

17 (b) Such payments were made solely as a result of an employer misre-
 18 porting wages earned in a claimant's base period and made to a claimant
 19 who could not reasonably have been expected to recognize an error in the
 20 wages reported.

21 (6) Neither the director nor any of his agents or employees shall be li-
 22 able for benefits paid to persons not entitled to the same under the provi-
 23 sions of this chapter if it appears that such payments have been made in good
 24 faith and that ordinary care and diligence have been used in the determina-
 25 tion of the validity of the claim or claims under which such benefits have
 26 been paid.

27 (7) The director may, in his sole discretion, compromise any or all of
 28 an overpayment, civil penalty in excess of the amount required to be paid
 29 into the employment security fund pursuant to subsection (4) (c) of this sec-
 30 tion, interest or fifty-two (52) week disqualification assessed under sub-
 31 sections (1) and (2) of this section and section 72-1366(12), Idaho Code,
 32 when the director finds it is in the best interest of the department.

33 SECTION 3. That Section 72-1603, Idaho Code, be, and the same is hereby
 34 amended to read as follows:

35 72-1603. DEFINITIONS. As used in this chapter:

36 (1) "Date of hire" or "date of rehire" means the actual commencement of
 37 employment of an employee for wages or other remuneration.

38 (2) "Department" means the Idaho department of labor.

39 (3) "Director" means the director of the Idaho department of labor.

40 (4) "Employee" means an individual who is an employee within the mean-
 41 ing of 26 U.S.C. 3401. "Employee" does not include an employee of a federal
 42 or state agency performing intelligence or counterintelligence functions,
 43 if the head of such agency has determined that reporting information with
 44 respect to the employee pursuant to this chapter could endanger the safety
 45 of the employee or compromise an ongoing investigation or intelligence mis-
 46 sion.

47 (5) "Employer" has the meaning given such term in 26 U.S.C. 3401(d)
 48 and includes labor organizations and governmental entities, except for any
 49 department, agency or instrumentality of the United States. The term "em-

1 ployer" does not include a multistate employer who has notified the United
2 States secretary of health and human services in writing that it will trans-
3 mit new hire reports magnetically or electronically to a state other than
4 Idaho.

5 (6) "Labor organization" shall have the meaning given such term in 29
6 U.S.C. 152(5), and includes any entity, ~~also known as a "hiring hall,"~~
7 which is used by the organization and an employer to carry out requirements
8 described in 29 U.S.C. 158(f)(3) or an agreement between the organization
9 and the employer.

10 (7) "Rehire" means to ~~re-employ~~ reemploy an individual who was laid
11 off, separated, furloughed, granted leave without pay or terminated from
12 employment at least ~~twelve (12) months~~ sixty (60) consecutive days prior to
13 ~~re-employment~~ reemployment.

14 SECTION 4. Sections 1 and 2 of this act shall be in full force and effect
15 on and after October 22, 2013; and Section 3 of this act shall be in full force
16 and effect on and after July 1, 2013.